

Message Text

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ACTION OPIC-12

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FM AMEMBASSY LAGOS

TO SECSTATE WASHDC 2033

UNCLAS SECTION 1 OF 2 LAGOS 9814

E.O. 11652: N/A

TAGS: EGEN, NI

SUBJECT: OPIC: NIGERIA READY TO AGREE

REF: LAGOS 9770

THERE FOLLOWS VERBATIM TEXT OF DRAFT AGREEMENT THAT MINISTRY
OF INDUSTRY HAS INDICATED FMG PREPARED TO ACCEPT:

BEGIN VERBATIM ARTICLE 1

THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA AND THE
GOVERNMENT OF THE UNITED STATES OF AMERICA SHALL, UPON THE
REQUEST OF EITHER OF THEM, CONSULT IN RESPECT OF PROJECTS IN
NIGERIA WHICH ARE PROPOSED BY CITIZENS OF THE UNITED STATES
OF AMERICA WITH RESPECT TO WHICH INVESTMENT GUARANTEES HAS
BEEN MADE OR ARE UNDER CONSIDERATION.

ARTICLE 2

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AGREES THAT
IT WILL ISSUE NO GUARANTEE WITH RESPECT TO ANY PROJECT UNLESS
IT IS APPROVED BY THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA

ARTICLE 3

1. IF THE GOVERNMENT OF THE UNITED STATES OF AMERICA

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MAKES PAYMENT IN UNITED STATES DBLLARS TO ANY PERSON UNDER

SUCH GUARANTEE THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA SHALL RECOGNISE THE TRANSFER BY SUCH PERSON TO THE GOVERNMENT OF THE UNITED STATES OF AMERICA OF ANY RIGHT, TITLE OR INTEREST IN ASSETS EXPROPRIATED OR ASSETS RENDERED USELESS BY REASONS OF EXPROPRIATION, OR ANY CURRENCY OR CREDITS IN ANY CURRENCY WITH RESPECT TO WHICH SUCH PAYMENT UNDER A GUARANTEE WAS MADE, AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA SHALL RECOGNISE THE SUBROGATION OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA TO ANY RIGHT, TITLE, CLAIM OR CAUSE OF ACTION EXISTING IN CONNECTION THEREWITH.

2. BEFORE THE GOVERNMENT OF THE UNITED STATES OF AMERICA MAKES ANY PAYMENT TO ANY PERSON UNDER THIS GUARANTEE AGREEMENT, IT SHALL NOTIFY AND CONSULT THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA.

3. IF THE GOVERNMENT OF THE UNITED STATES OF AMERICA BECOMES SUBROGATED TO ANY RIGHT, TITLE, OR INTEREST IN ASSETS EXPROPRIATED OR ASSETS RENDERED USELESS BY REASON OF EXPROPRIATION OR ANY CLAIM OR CAUSE OF ACTION EXISTING IN CONNECTION THEREWITH, IT SHALL GIVE TO THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA THE FIRST OPTION TO PURCHASE SUCH ASSETS TO WHICH THE GOVERNMENT OF THE UNITED STATES OF AMERICA SHALL HAVE ASSUMED TITLE AT A PRICE TO BE NEGOTIATED BY THE TWO GOVERNMENTS.

ARTICLE 4

LAWFUL CURRENCY OF THE FEDERAL REPUBLIC OF NIGERIA, INCLUDING CREDITS THEREOF ACQUIRED BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA PURSUANT TO SUCH GUARANTEES, SHALL BE ACCORDED TREATMENT NOT LESS FAVOURABLE THAN THAT ACCORDED TO PRIVATE FUNDS ARISING FROM TRANSACTIONS OF UNITED STATES NATIONALS WHICH ARE COMPARABLE TO THE TRANSACTIONS COVERED BY SUCH GUARANTEES, AND SUCH CURRENCY OR CREDITS THEREOF SHALL BE AVAILABLE TO THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR ADMINISTRATIVE EXPENSES. HOWEVER, THE TWO GOVERNMENTS SHALL CONSULT WITH A VIEW TO ASSESSING THE UTILIZATION OF THOSE FUNDS IN SUCH MANNER AS TO AVOID ANY PREJUDICE TO THE INTERESTS OF EITHER COUNTRY.

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ARTICLE 5

THE GOVERNMENT OF THE FEDERAL REPUBLIC OF NIGERIA MAY, IN ACCORDANCE WITH ITS EXCHANGE CONTROL LAWS AND REGULATIONS, IMPOSE RESTRICTIONS ON CURRENCY TRANSFERS TO THE EXTENT REQUIRED TO ASSURE THE AVAILABILITY OF FOREIGN EXCHANGE FOR PAYMENTS ESSENTIAL TO THE HEALTH AND WELFARE OF ITS PEOPLE OR TO THE EXTENT PERMISSIBLE UNDER THE AFORE-MENTIONED EXCHANGE CONTROL LAWS AND REGULATIONS.

ARTICLE 6

WHERE THE LOSS OF ASSETS OWNED BY A COMPANY WHICH IS COVERED UNDER THE TERMS OF THIS AGREEMENT IS DUE TO NON-COMPLIANCE WITH THE INDIGENISATION DECREE OF THE FEDERAL REPUBLIC OF NIGERIA, 1972 AND ANY RULES AND REGULATIONS MADE THEREUNDER, THE PROVISIONS OF THE INDIGENISATION DECREE SHALL APPLY.

ARTICLE 7

1. IF ANY DISPUTE ARISES BETWEEN THE TWO GOVERNMENTS RELATING TO THE INTERPREATION OR APPLICATION OF THE PRESENT AGREEMENT THE TWO GOVERNMENTS SHALL IN THE FIRST PLACE ENDEAVOR TO SETTLE IT BY DIRECT NEGOTIATIONS BETWEEN THEMSELVES..

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TO SECSTATE WASHDC 2034

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2. IF THE TWO GOVERNMENTS FAIL TO REACH A SETTLEMENT BY NEGOTIATIONS THEY SHALL REFER THE DISPUTE TO AN ARBITRAL TRIBUNAL WHICH SHALL CONSIST OF THREE PERSONS APPOINTED AS FOLLOWS: ONE ARBITRATOR TO BE NAMED BY EACH GOVERNMENT, AND THE THIRD ARBITRATOR, WHO SHALL ALSO ACT AS CHAIRMAN OF THE TRIBUNAL, TO BE AGREED UPON BY THE TWO GOVERNMENTS PROVIDED THAT SUCH THIRD ARBITRATOR SHALL NOT BE A NATIONAL OF EITHER COUNTRY. EACH OF THE GOVERNMENTS SHALL DESIGNATE AN ARBITRATOR WITHIN THREE MONTHS OF THE DATE OF DELIVERY BY EITHER GOVERNMENT TO THE OTHER GOVERNMENT OF A DIPLOMATIC REQUEST FOR ARBITRATION OF THE DISPUTE: AND THE THIRD ARBITRATOR SHALL BE AGREED UPON WITH THREE

MONTHS AFTER SUCH PERIOD OF THREE MONTHS. IF EITHER OF THE GOVERNMENTS FAILS TO DESIGNATE ITS OWN ARBITRATOR WITHIN THREE MONTHS OR IF THE THIRD ARBITRATOR IS NOT AGREED UPON WITH THE TIME LIMITS INDICATED, THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE SHALL, AT THE REQUEST OF EITHER GOVERNMENT, MAKE THE NECESSARY APPOINTMENT OR APPOINTMENTS BY CHOOSING THE ARBITRATOR OR ARBITRATION CASE ANY ARBITRATOR APPOINTED IN ACCORDANCE WITH THIS CLAUSE SHALL RESIGN, DIE OR BECOME UNABLE TO ACT, A SUCCESSOR SHALL BE APPOINTED IN THE SAME MANNER AS HEREIN PRESCRIBED FOR THE APPOINTMENT OF THE ORIGINAL ARBITRATOR AND HIS SUCCESSOR SHALL HAVE ALL THE POWERS AND DUTIES OF THE ORIGINAL ARBITRATOR.

3. THE TWO GOVERNMENTS SHALL COMPLY WITH ANY
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DECISION GIVEN UNDER PARAGRAPH (2) OF THIS ARTICLE.

4. EACH GOVERNMENT SHALL BE RESPONSIBLE FOR THE COST OF ITS DESIGNATED ARBITRATOR AND SUBSIDIARY STAFF PROVIDED AND BOTH GOVERNMENTS SHALL SHARE EQUALLY ALL SUCH FURTHER EXPENSES INVOLVED IN THE ACTIVITIES OF THE ARBITRAL TRIBUNAL INCLUDING THOSE OF THE CHAIRMAN:

ARTICLE 8

THE AGREEMENT ON INVESTMENT GUARANTEE EFFECTED BY THE EXCHANGE OF NOTES SIGNED AT LAGOS ON THE 28TH AUGUST, 1962 AND 24TH DECEMBER, 1962 RESPECTIVELY IS HEREBY TERMINATED FROM THE DATE OF ENTRY INTO FORCE OF THIS AGREEMENT.

ARTICLE 9

THIS AGREEMENT SHALL COME INTO FORCE ON THE DATE OF EXCHANGE OF NOTES CONFIRMING THAT IT HAS BEEN APPROVED IN ACCORDANCE WITH THE CONSTITUTIONAL PROCEDURES OF THE CONTRACTING PARTIES AND SHALL BE SUBJECT TO FIVE-YEAR PERIODIC REVIEWS. THE TERMINATION OF THE AGREEMENT SHALL TAKE EFFECT SIX MONTHS AFTER THE RECEIPT BY ONE OF THE PARTIES OF A NOTICE IN WRITING THROUGH NORMAL DIPLOMATIC CHANNELS SHOWING THE INTENTION OF THE OTHER PARTY TO TERMINATE THE AGREEMENT.

PROVIDED, HOWEVER, THAT WHERE THIS AGREEMENT IS TERMINATED IN THE MANNER PRESCRIBED ABOVE, ITS PROVISIONS SHALL CONTINUE TO BE APPLIED TO ANY EXISTING AND UNEXPIRED TRANSACTION WHICH WAS COMMENCED UNDER

ITS TERMS.

DONE AT THIS DAY OF 197

IN TWO ORIGINALS IN THE ENGLISH LANGUAGE BOTH BEING
EQUALLY AUTHENTIC.

FOR THE FEDERAL MILITARY FOR THE GOVERNMENT OF
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